

JUDICIARY RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 57 - SEXUAL OFFENDER CLASSIFICATION BOARD

57.01.01 - RULES GOVERNING THE SEXUAL OFFENDER CLASSIFICATION BOARD

DOCKET NO. 57-0101-0401 (NEW CHAPTER)

NOTICE OF RULEMAKING - PENDING FEE RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2004.

This pending rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective after the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 76-5224 and 67-5291, Idaho Code. After the pending rule is approved, rejected, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule, and amended the temporary rule. The action is authorized pursuant to Section 18-8314, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any changes between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted to implement and effectuate legislation passed and signed into law during the 2003 legislative session.

In response to public comment, the temporary rule and the pending rule are being amended as follows: Sections 004 and 131 are amended to clarify the offender polygraph examination rule and add polygraph examiner standards. Subsection 040.06.a is amended to provide for on-line continuing education units.

Due to Board review, the temporary rule and the pending rule are being amended at Subsection 040.03 and Section 051 to emphasize the statutory requirement for Idaho licensure for certified sexual offender evaluators. Additional typographical, transcriptional, and/or clerical corrections have been made to the rule pursuant to Section 67-5228, Idaho Code, and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections with changes that differ from the proposed text are printed in this bulletin. The original text of the temporary and proposed rule was published in the October 6, 2004, Idaho Administrative Bulletin, Volume 04-10, pages 672 through 686.

FEE SUMMARY: Pursuant to Section(s) 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed is justified and necessary to avoid immediate danger and the fee is described herein:

An application-processing fee is required for all qualified providers seeking sexual offender evaluator certification. The application fee for initial certification is \$75. The application fee

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for annual certification renewal is \$50.

Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed through this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the pending rule, contact Kathy Baird, Management Assistant, at (208) 658-2149.

DATED this 16th day of November, 2004.

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 18-8314, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

Saturday, November 6, 2004

**1:00 p.m. - 3:00 p.m. - Department of Correction Basement Training Room
Syringa Bank Building, 1299 N. Orchard St, Boise, ID 83706**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This is a new chapter. (1) Rulemaking addresses the need for quality, uniformity and consistency in sexual offender evaluations provided to the courts prior to sentencing; (2) Establishes an application system to certify sexual offender evaluators; (3) Provides quality assurance for evaluators and evaluations; (4) Adopts into rule, procedures set by the Sexual Offender Classification Board for designating high-risk sexual offenders as Violent Sexual Predators.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following

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reasons: Protection of public health, safety, and welfare. This rulemaking is initiated to comply with the provisions of Senate Bill 1002 passed by the 2003 Legislature and signed into law by the Governor on April 8, 2003.

FEE SUMMARY: An application-processing fee is required for all qualified providers seeking sexual offender evaluator certification. The application fee for initial certification is \$75. The application fee for annual certification renewal is \$50.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, informal negotiated rulemaking was conducted. A public hearing was held on February 21, 2004. In addition, the SOCB conducted informal meetings with concerned parties, invited parties to board administrative business meetings, and distributed draft language to affected entities for comment.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathy Baird, Management Assistant, at (208) 658-2149.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 6, 2004.

DATED this 19th day of August, 2004.

Kathy Baird, Management Assistant
Sexual Offender Classification Board
1299 N. Orchard St Suite 110, Boise, ID 83706
(208) 658-2149 phone; (208) 327-7102 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 57 - SEXUAL OFFENDER CLASSIFICATION BOARD

IDAPA 57 TITLE 01 CHAPTER 01

57.01.01 – RULES OF THE SEXUAL OFFENDER CLASSIFICATION BOARD

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 18-8314(7), Idaho Code, to implement the provisions of Sections 18-8312 through 18-8321, Idaho Code. (10-1-04)T

001. TITLE AND SCOPE.

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01. Title. These rules are cited as IDAPA 57.01.01, “Rules of the Sexual Offender Classification Board”. (10-1-04)T

02. Scope. These rules provide procedures for the Sexual Offender Classification Board to: (10-1-04)T

a. Determine whether a sexual offender should be designated as a Violent Sexual Predator; (10-1-04)T

b. Set certified evaluator qualifications and standards; (10-1-04)T

c. Approve, issue, renew, deny, suspend or revoke psychosexual evaluator certification; and (10-1-04)T

d. Establish fees for initial psychosexual evaluator certification and annual psychosexual evaluator certification renewal. (10-1-04)T

03. Relationship to the Department of Correction. The board is created in the Idaho Department of Correction, and relies upon the department for fiscal and administrative support. The governor appoints the board members. The powers and duties of the board are separate from the Department of Correction, and are set forth in Section 18-8314, Idaho Code. (10-1-04)T

002. WRITTEN INTERPRETATIONS.

The board may have written statements that pertain to the interpretation of the rules of this chapter. These interpretations, if any, may be found on the board’s website. (10-1-04)T

003. ADMINISTRATIVE APPEALS.

The Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General”, shall govern administrative appeals. (10-1-04)T

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (10-1-04)T

01. “Association for the Treatment of Sexual Abusers Professional Code of Ethics, 2001 Edition.” This document is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005. (10-1-04)T

02. “Bylaws of the American Polygraph Association, 2004 Edition.” *This document is available from the American Polygraph Association National Office, PO Box 8037, Chattanooga, Tennessee 37414.* (10-1-04)T

023. “Practice Standards and Guidelines for Members of the Association for the Treatment of Sexual Abusers, 2001 Edition.” This document is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005. (10-1-04)T

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034. The Sexual Offender Classification Board's "Required Format for Psychosexual Evaluation Reports, ~~July~~ November 2004 Revision." This document is available from the board, and is posted on the board's website. ~~(10-1-04)T~~(10-1-04)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The Sexual Offender Classification Board administrative office is located at the Department of Correction headquarters, 1299 North Orchard, Suite 110, Boise, Idaho 83706. Business hours are typically 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is Office of the Sexual Offender Classification Board, 1299 North Orchard, Suite 110, Boise, Idaho 83706. The telephone number is (208) 658-2149. The facsimile number is (208) 327-7102. The board's website address is <http://www2.state.id.us/socb/>. (10-1-04)T

006. PUBLIC RECORDS ACT COMPLIANCE.

01. Administrative Rules. The rules contained herein are promulgated pursuant to Title 67, Chapter 52, Idaho Code, and are public records. (10-1-04)T

02. Public Records Requests. Requests for public information are processed in compliance with Sections 18-8321, 18-8323, and 20-223, Idaho Code; IDAPA 06.01.01, "Rules of the Board of Correction"; and the Idaho Public Records Act. (10-1-04)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Sexual Offender Classification Board described in Section 18-8312, Idaho Code. (10-1-04)T

02. Central Roster of Certified Evaluators. A roster of evaluators who meet the qualifications, and are certified by the board to perform psychosexual evaluations. (10-1-04)T

03. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 54, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience and training, expertise in the assessment and treatment of adult sexual offenders, shall meet the qualifications and shall be approved by the board to perform psychosexual evaluations in this state, as described in Sections 18-8314, Idaho Code. (10-1-04)T

04. Client. A person receiving mental health services from a certified evaluator. A client may be a person who is not a sexual offender. (10-1-04)T

05. Evaluation. For the purpose of certification eligibility, defined as the direct provision of comprehensive evaluation and assessment services to an adult who has been convicted of a sexual offense. The evaluation must be related to the client's sexual offending behavior. (10-1-04)T

06. Mental Abnormality. A congenital or acquired condition affecting the emotional or volitional capacity of a person in a manner that predisposes him to commit criminal sexual acts

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to a degree that makes him a menace to the health, safety, or both, of other persons. (10-1-04)T

07. Personality Disorder. A congenital or acquired physical or mental condition resulting in a general lack of power or desire to control sexual impulses. (10-1-04)T

08. Predatory. Actions directed at an individual who was selected by the offender for the primary purpose of engaging in illegal sexual behavior. (10-1-04)T

09. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing an offender's sexual development, sexual deviancy, sexual history and risk of re-offense. (10-1-04)T

10. Quality Assurance. Technical review of a psychosexual evaluation report to assure minimum standards are met. The board conducts the review. (10-1-04)T

11. Sexual Offender. A person convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts. (10-1-04)T

12. Sexually Violent Offense. (10-1-04)T

a. A criminal offense as listed in Section 18-8314, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth or other jurisdiction of the United States, including tribal courts and military courts; or (10-1-04)T

b. Engaging in physical contact with another person with intent to commit sexual abuse or aggravated sexual abuse as described in Sections 2241 and 2242 of Title 18, United States Code, and Section 18-8303(1), Idaho Code. (10-1-04)T

13. Treatment. For the purpose of certification eligibility, defined as the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense. Treatment must be directly relevant to the client's sexually offending behavior. (10-1-04)T

14. Victim. A person, including the immediate family of a minor, named in the complaint, information or indictment, who suffers physical or emotional injury as the result of the offender's criminal conduct. (10-1-04)T

15. Violent Sexual Predator. A person convicted of an offense listed in Section 18-8314, Idaho Code, and who is determined by the board to pose a high risk of committing an offense or engaging in predatory sexual conduct. (10-1-04)T

011. ABBREVIATIONS.

01. ATSA. The Association for the Treatment of Sexual Abusers. (10-1-04)T

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02. DSM-IV. The “Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition,” published by the American Psychiatric Association. (10-1-04)T

03. IDOC. The Idaho Department of Correction. (10-1-04)T

04. VSP. Violent Sexual Predator. (10-1-04)T

012. -- 019. (RESERVED).

020. RECORDKEEPING.

01. Evaluators. Records on all applicants and certifications issued, renewed, denied, suspended, and revoked shall be maintained for a period not less than five (5) years. (10-1-04)T

02. Violent Sexual Predators. The file on a sexual offender that is maintained by the board is considered the official file for all purposes. (10-1-04)T

021. BOARD MEETINGS.

01. Meetings. The board meets at least quarterly and may meet more frequently. All business of the board is conducted in compliance with the open meeting law, pursuant to Title 67, Chapter 23, Idaho Code, and Section 18-8315, Idaho Code. (10-1-04)T

02. Agenda. An agenda for each regularly scheduled meeting is posted in the IDOC central office at least twenty-four (24) hours prior to the regularly scheduled meeting. (10-1-04)T

022. -- 030. (RESERVED).

031. OFFENDERS SUBJECT TO EVALUATION.

01. Pre-Sentence. A sexual offender who is convicted on or after July 1, 1993 of any offense listed in Section 18-8304, Idaho Code, is subject to psychosexual evaluation prior to sentencing, if ordered by the court. (10-1-04)T

02. Pre-Release. Prior to release from incarceration, a sexual offender whose conviction is listed in Section 18-8314(1), Idaho Code, and who has been referred by the IDOC or the Commission for Pardons and Parole, shall be considered by the board for review for possible VSP designation. (10-1-04)T

03. Under IDOC Supervision. (10-1-04)T

a. Upon recommendation by the supervising officer, the Commission for Pardons and Parole may request the board to consider a sexual offender for review for possible VSP designation. The offender must be under parole supervision for a crime as listed in Section 18-8314(1), Idaho Code. (10-1-04)T

b. Upon recommendation by the supervising officer, the court having jurisdiction over a sexual offender may request the board to consider the offender for review for possible VSP

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designation. The offender must be under court ordered probation for a crime as listed in Section 18-8314(1), Idaho Code. (10-1-04)T

04. Under Federal Supervision. The federal court having jurisdiction over a sexual offender who is residing in Idaho may request the board to consider the offender for review for possible VSP designation. The offender must be under federal supervision for conviction of a crime as listed in Section 18-8214(1), Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth or other jurisdiction of the United States, including tribal courts and military courts. (10-1-04)T

032. -- 039. (RESERVED).

040. CERTIFIED EVALUATOR QUALIFICATIONS.

Each evaluator who performs an adult psychosexual evaluation pursuant to Sections 18-8316 and 18-8317, Idaho Code, must meet the qualifications as set forth in this section and be certified by the board. (10-1-04)T

01. Credential. The credential of a certified evaluator must be in good standing with no currently pending disciplinary action by the issuing authority. The certified evaluator shall be a recognized professional, who specializes in evaluation, treatment, or both, of adult sexual offenders. (10-1-04)T

02. Educational and Professional Qualifications. A certified evaluator must be: (10-1-04)T

a. A licensed psychiatrist pursuant to Title 54, Chapter 18, Idaho Code; or (10-1-04)T

b. A licensed masters or doctoral level mental health professional pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. (10-1-04)T

03. Licensure. *Idaho licensure is required pursuant to §18-8303, Idaho Code. A certified evaluator must maintain licensure by the appropriate Idaho licensing board for the duration of his evaluator certification.* (10-1-04)T

034. Specialized Training. (10-1-04)T

a. For initial certification, the certified evaluator applicant must have attended forty (40) hours of formal conferences, symposia, or seminars in the following areas as relevant to the treatment and evaluation of adult sexual offenders, within the preceding two (2) years:(10-1-04)T

i. Assessment and diagnosis of sexual offenders; (10-1-04)T

ii. Psychometric and psychophysiological testing; (10-1-04)T

iii. Psychopathology; (10-1-04)T

iv. Sexual offender risk assessment; (10-1-04)T

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- v. Counseling and psychotherapy; (10-1-04)T
- vi. Cognitive therapy; (10-1-04)T
- vii. Couples and family therapy; (10-1-04)T
- viii. Family reunification; (10-1-04)T
- ix. Pharmacological therapy; (10-1-04)T
- x. Relationship and social skills training; (10-1-04)T
- xi. Sexual offense relapse prevention; (10-1-04)T
- xii. Social support networks; and (10-1-04)T
- xiii. Victim awareness and empathy. (10-1-04)T

045. Experience Qualifications. For initial certification, the certified evaluator applicant shall have at least two thousand (2000) hours of adult sexual offender treatment and evaluation experience within the preceding ten (10) years. The two thousand (2000) hours must include: (10-1-04)T

a. At least two hundred fifty (250) hours of adult sexual offender evaluation experience; and (10-1-04)T

b. At least two hundred fifty (250) hours of adult sexual offender treatment experience. (10-1-04)T

056. Continuing Education Requirement. For certification renewal, the certified evaluator shall have attended forty (40) hours of formal conferences, symposia, or seminars relevant to the treatment and evaluation of adult sexual offenders within the preceding two (2) years. (10-1-04)T

a. No more than ten (10) hours of continuing education units may be obtained from on-line educational sources during a two (2) year period. (10-1-04)T

b. Any such on-line education must be from a recognized educational institution. (10-1-04)T

c. Verification of program completion must be provided with the certification renewal application. (10-1-04)T

067. Understanding. A certified evaluator shall have a thorough understanding of counter-transference issues and a broad knowledge of sexuality in the general population. A certified evaluator shall also have a good understanding of basic theories and typologies of sexual offenders and sexual assault victims. (10-1-04)T

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041. -- 049. (RESERVED).

050. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.

- 01. General Considerations.** A certified evaluator shall: (10-1-04)T
- a.** Be fully aware of and adhere to the standards of his area of credentialing; (10-1-04)T
 - b.** Subscribe to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice Standards and Guidelines, as referenced in Section 004 of these rules; (10-1-04)T
 - c.** Be knowledgeable of statutes and scientific data relevant to specialized adult sexual offender evaluation; (10-1-04)T
 - d.** Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Sections 18-8316 and 18-8317, Idaho Code; (10-1-04)T
 - e.** Be committed to community protection and safety; (10-1-04)T
 - f.** Avoid relationships with clients that may constitute a conflict of interest, impair professional judgement and risk exploitation; and (10-1-04)T
 - g.** Have no sexual relationships with any client. (10-1-04)T

051. RECIPROCITY.

The board may consider reciprocity *in certified evaluator qualification criteria, as outlined in Section 040 of these rules*, for any applicant who has been licensed or certified to perform sexual offender evaluations in another state. ~~An applicant requesting consideration for reciprocity shall submit an initial certification application as outlined in Section 060 of these rules.~~

~~(10-1-04)T~~(10-1-04)T

01. Idaho License. *Idaho licensure is required pursuant to Section 18-8303, Idaho Code. An applicant or certified evaluator who is licensed in another state must also be licensed or certified by the appropriate Idaho licensure board. An Idaho certified evaluator must maintain licensure by the appropriate Idaho licensing board for the duration of his evaluator certification.*

(10-1-04)T

02. Application. *An applicant requesting initial consideration for reciprocity shall submit an initial certification application as outlined in Section 060 of these rules. Application for annual certification renewal shall follow the process outlined in Subsection 060.04 of these rules.*

(10-1-04)T

052. -- 059. (RESERVED).

060. CERTIFIED EVALUATOR APPLICATION.

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01. Application for Initial Certification. An applicant seeking certified evaluator status must submit: (10-1-04)T

a. A completed application on forms provided by the board, and accompanied by documents indicated in Subsection 060.02 of this rule; and (10-1-04)T

b. An application fee of seventy-five dollars (\$75) payable to the board. (10-1-04)T

02. Documentation. The certification application must be submitted to the board, accompanied by: (10-1-04)T

a. Proof of professional licensure; (10-1-04)T

b. The assurances and release form; (10-1-04)T

c. Verification of educational, professional, and experience qualifications as established in Section 040 of these rules; and (10-1-04)T

d. Copies of two (2) psychosexual evaluation reports completed by the applicant within the past year. These evaluations must have names and identifying characteristics redacted, and may not have been submitted previously to the board. (10-1-04)T

03. Certification Period, Posting Requirement, and Notification of Changes. Evaluator certification is effective for one (1) calendar year from the date of issue printed on the certificate, unless the certification is suspended or revoked. The evaluator certification applies only to the person named therein and is not transferable. The board must be notified in writing within thirty (30) days of any change in the certified evaluator's business address, phone number, or both. (10-1-04)T

04. Expiration and Renewal of Certification. No certification shall be renewed, except as follows: (10-1-04)T

a. At least sixty (60) days prior to the expiration of the certification, the certified evaluator shall apply for renewal of the certification on forms provided by the board. (10-1-04)T

b. The renewal application must be accompanied by: (10-1-04)T

i. Proof of professional licensure; (10-1-04)T

ii. The assurances and release form; (10-1-04)T

iii. Verification of continuing education participation as required in Subsection 040.05 of these rules; (10-1-04)T

iv. An application renewal fee of fifty dollars (\$50) payable to the board; and (10-1-04)T

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v. Copies of two (2) psychosexual evaluation reports completed by the applicant within the past year. These evaluations must have names and identifying characteristics redacted, and may not have been submitted previously to the board. (10-1-04)T

c. An evaluator who has not renewed his certification shall be removed from the evaluator roster thirty (30) days after his certification has expired. (10-1-04)T

d. An evaluator whose certification has been expired for less than one (1) year may reapply for certification by following the certification renewal process outlined in Subsection 060.04 of this rule. (10-1-04)T

e. An evaluator whose certification has been expired for one (1) year or longer may reapply for certification by following the initial certification process outlined in Subsection 060.01 of this rule. (10-1-04)T

i. The board may require a written and verifiable plan for supervised practice by a supervisor approved by the board. (10-1-04)T

ii. The board shall determine the duration for supervised practice of a certified evaluator for certification purposes. (10-1-04)T

061. REQUEST FOR CONDITIONAL WAIVER.

The board may consider an applicant's request for conditional waiver. Conditional waiver requests shall only be considered for deficiencies in experience qualifications as established in Subsection 040.04 of these rules. (10-1-04)T

01. Request. A request for conditional waiver must be submitted with the initial certification application. (10-1-04)T

02. Representation. An applicant who is granted a conditional waiver may not represent himself as a certified evaluator. (10-1-04)T

a. An evaluator who is granted a conditional waiver shall indicate on the psychosexual evaluation report signature line that he is an approved psychosexual evaluator by waiver. (10-1-04)T

b. The roster of certified evaluators shall identify an evaluator who is granted a conditional waiver, and the waiver's expiration date. (10-1-04)T

03. Renewal. A conditional waiver is limited to a period of three (3) years. Conditional waivers may not be extended or renewed after the third year. (10-1-04)T

a. An evaluator who has been granted a conditional waiver may apply to renew his waiver after the first year by following the certification renewal process outlined in Subsection 060.04 of these rules. (10-1-04)T

b. Documentation must be included with the renewal application verifying the applicant's progress in attaining full qualification requirements. (10-1-04)T

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c. An evaluator who fails to demonstrate progress in attaining full qualification requirements may not be approved for renewal of the conditional waiver. The evaluator shall be removed from the evaluator roster. (10-1-04)T

062. -- 079. (RESERVED).

080. CENTRAL ROSTER OF CERTIFIED EVALUATORS.

01. Identification. The board shall publish a roster of evaluators who are approved to conduct pre-sentence psychosexual evaluations pursuant to Section 18-8316, Idaho Code. The roster shall indicate: (10-1-04)T

- a. The evaluator's name; (10-1-04)T
- b. The evaluator's business address and telephone number; (10-1-04)T
- c. Whether an evaluator is a certified evaluator or approved evaluator by conditional waiver; and (10-1-04)T
- d. The expiration date of the evaluator's certification or conditional waiver. (10-1-04)T

02. Availability. A copy of the roster may be obtained from the board, and shall be posted on the board's website. (10-1-04)T

081. EXCLUSION.

Each mental health employee of the Department of Correction who conducts psychosexual evaluations, is exempt from the evaluator certification process. This exemption shall apply only while the employee is acting within the course and scope of his employment with the IDOC. (10-1-04)T

082. -- 089. (RESERVED).

090. DENIAL AND REVOCATION OF CERTIFICATION.

01. Cause. The board may deny, suspend, or revoke certification of an applicant or certified evaluator for any of the following reasons: (10-1-04)T

- a. Failure to comply with any portion of this chapter. (10-1-04)T
- b. Failure to meet the evaluator qualifications as required in Section 040 of these rules. (10-1-04)T
- c. Falsification of any information or documentation, or concealing a material fact in the application for certification. (10-1-04)T
- d. Failure to furnish any data, information, or records as requested. (10-1-04)T

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- e. Demonstration of inadequate knowledge. (10-1-04)T
 - f. Performance of two (2) or more psychosexual evaluations during the current certification period that the board finds are below standard. (10-1-04)T
 - g. Refusal or failure to participate in the quality assurance process. (10-1-04)T
 - h. A guilty plea or conviction for a felony criminal offense or a misdemeanor offense against a person. (10-1-04)T
 - i. A domestic violence protective order issued against the applicant or evaluator within the previous five (5) years. (10-1-04)T
 - j. A criminal, civil or administrative determination that the evaluator has committed, permitted, or aided and abetted the commission of any illegal act while holding an evaluator certification. (10-1-04)T
 - k. Accepted a gift or favor from a sexual offender being assessed, from the family of the sexual offender being assessed, or from their agent. (10-1-04)T
 - l. Provided a gift or favor to a sexual offender being assessed, to the family of the sexual offender being assessed, or to their agent. (10-1-04)T
 - m. Demonstration of a conflict of interest by providing both the psychosexual evaluation and treatment or by referring the sexual offender to the evaluator's employer or business associate, unless permitted by the court pursuant to Section 18-8316, Idaho Code. (10-1-04)T
- 02. Reapplication.** An applicant or certified evaluator may reapply for certification under the following conditions: (10-1-04)T
- a. An applicant whose certification is denied may reapply when evidence is available confirming that he meets the required qualifications outlined in Section 040 of these rules. (10-1-04)T
 - b. A certified evaluator whose certification has been revoked may request permission to reapply for certification after one (1) year following his certification revocation. (10-1-04)T
 - c. The board has sole discretion in granting an evaluator permission to reapply for certification after that evaluator's certification has been revoked. (10-1-04)T
- 03. Second Revocation.** No subsequent certification request shall be approved following an evaluator's second certification revocation. (10-1-04)T

091. -- 099. (RESERVED).

100. NOTICE OF INTENT.

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The board must provide the applicant or certified evaluator with notice of intent to deny, suspend, or revoke certification, and the right to appeal. (10-1-04)T

01. Notification of Applicant. The board shall notify the applicant or certified evaluator of the board's intent to deny, suspend, or revoke certification. (10-1-04)T

a. The notice shall be mailed to the applicant or certified evaluator by certified mail. (10-1-04)T

02. Contents of Notice. The notice shall: (10-1-04)T

a. State the basis for the intended action of the board; (10-1-04)T

b. May suggest means by which the matter might be remedied; and (10-1-04)T

c. Shall provide the applicant or certified evaluator an opportunity to answer, or to show cause in the matter. (10-1-04)T

101. APPEAL.

The applicant or certified evaluator shall have not more than thirty (30) days from the date on which the board's notice of intended action is served upon him to file a written appeal with the board. The written appeal shall include documentation supporting the appellant's argument refuting the board's intended action. (10-1-04)T

102. HEARING OFFICER.

A hearing officer designated by the board shall receive and distribute copies of the written appeal, and any additional information, data, documents or references to all board members for their consideration. The hearing officer shall set the appeal hearing time and place, and submit notices to all parties. (10-1-04)T

103. HEARING.

01. Hearing Procedures. The Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," govern procedures for a hearing before the board. (10-1-04)T

a. The appeal hearing shall be conducted during a regular board meeting. The board shall review the written appeal, and any additional information, data, documents or references furnished by the appellant. The board reserves authority to place reasonable limitations on the time allotted to conduct the hearing. The board also reserves the option to delegate authority to the hearing officer to conduct additional fact finding, for further review by the board. (10-1-04)T

b. Appeal hearings may be conducted by teleconference. (10-1-04)T

c. All board members are entitled to attend and participate in a hearing. (10-1-04)T

d. Appeal determinations shall be conducted during executive session. (10-1-04)T

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02. Final Notice. The applicant or certified evaluator shall be notified by certified mail within two (2) weeks of the board's final decision concerning the action being appealed.

(10-1-04)T

104. -- 109. (RESERVED).

110. COMPLAINTS.

01. Complaints. Any individual may file against an evaluator by submitting a written complaint to the board. A complaint must include:

(10-1-04)T

a. The full name and address of the complainant;

(10-1-04)T

b. The name, address, and telephone number (if known) of the evaluator; and

(10-1-04)T

c. A clear and accurate statement of the facts describing the allegations against the evaluator.

(10-1-04)T

02. Screening. The hearing officer shall investigate all complaints to determine appropriateness for board action.

(10-1-04)T

a. Complaints determined to be more appropriate for intervention by another oversight agency shall be referred to that oversight agency.

(10-1-04)T

b. Some complaints may be appropriate for intervention by the board and referral to another oversight agency.

(10-1-04)T

c. If the facts and evidence after investigation are insufficient to warrant board review, no further action shall be taken.

(10-1-04)T

111. NOTICE OF COMPLAINT.

01. Notice. The certified evaluator shall be notified in writing of the complaint filed against him and the board's investigation of the complaint.

(10-1-04)T

02. Rights to Hearing. The certified evaluator shall be provided the opportunity to appear before the board to present his position concerning the allegations of the complaint. Hearing procedures, outlined in Section 103 of these rules, shall apply.

(10-1-04)T

112. -- 119. (RESERVED).

120. QUALITY ASSURANCE AND TECHNICAL REVIEW.

The board shall develop policies for technical review and quality assurance of psychosexual evaluation reports. These policies shall also address board recommendations regarding improvement in psychosexual evaluation performance and report quality.

(10-1-04)T

121. -- 129. (RESERVED).

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130. PSYCHOSEXUAL EVALUATION.

Psychosexual evaluation reports shall be written following the “Required Format for Psychosexual Evaluation Reports” as referenced in Section 004 of these rules. (10-1-04)T

01. Testing. The evaluator shall attempt utilization of testing instrumentation and assessment measures as identified in the “Required Format for Psychosexual Evaluation Reports”. (10-1-04)T

02. Offender Participation. The offender being evaluated may refuse or decline to participate in any testing, assessment measure, or physiological measure used for the pre-sentence psychosexual evaluation. The evaluator shall document the offender’s refusal or declination in the psychosexual evaluation report. Further, a written statement indicating the offender’s refusal or declination shall be signed by the offender and appended to the psychosexual evaluation report. (10-1-04)T

03. Physiological and Viewing Time Measures. The use of physiological or viewing time measures, or both, is highly recommended to further understand the offender’s level of deception and denial. (10-1-04)T

131. POLYGRAPH EXAMINATION.

A full disclosure polygraph *of an offender* is highly recommended, as a further risk assessment component ~~for of~~ the psychosexual evaluation process. ~~(10-1-04)T~~(10-1-04)T

01. Preparation. *The offender must be prepared prior to being administered a post-conviction pre-sentence polygraph. Preparation is considered as:* (10-1-04)T

a. *Full clinical interview by the evaluator;* (10-1-04)T

b. *Completion of testing measures as outlined in Section 130 of these rules; and* (10-1-04)T

c. *Discussion between the evaluator and offender about the offender’s instant offense and sexual history.* (10-1-04)T

~~012.~~ Consent. When a polygraph is conducted, the polygraph examiner shall obtain written consent to proceed from the offender being evaluated. (10-1-04)T

~~023.~~ Offender Participation. If the offender refuses or declines to participate in a polygraph examination, such refusal or declination shall be documented in the psychosexual evaluation report. Further, a written statement indicating the offender’s refusal or declination shall be signed by the offender and appended to the psychosexual evaluation report. (10-1-04)T

04. Polygraph Examiner. *Polygraph examination shall be conducted only by an examiner who is certified by the American Polygraph Association to conduct Post Conviction Sex Offender Testing (PCSOT). The standards for PCSOT certification may be found in the “Bylaws of the American Polygraph Association, Division III: APA Standards of Practice, January 10, 1999 Revision,” and will be complied with.* (10-1-04)T

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132. -- 149. (RESERVED).

150. EVALUATION FOR VIOLENT SEXUAL PREDATOR REVIEW.

The sexual offender referred to the board for VSP review shall be evaluated as set forth in Section 130 of these rules. (10-1-04)T

01. Evaluation Process. (10-1-04)T

a. The evaluator shall inform the sexual offender that the psychosexual evaluation is part of the board's review to determine if the offender should be designated as a VSP. (10-1-04)T

b. The sexual offender shall have an opportunity for input at the time of the psychosexual evaluation. (10-1-04)T

c. The board may waive a polygraph examination. (10-1-04)T

151. FAILURE TO COOPERATE.

Public safety takes precedence over the decision of a sexual offender not to cooperate with the evaluation for VSP designation review. The sexual offender shall be informed that the board may designate an offender as a VSP if he fails to cooperate with the psychosexual evaluation process or refuses to release records for the board's VSP designation review. (10-1-04)T

152. INTENTION TO RE-OFFEND.

If credible evidence supports a finding that a sexual offender has indicated an intention to re-offend, the offender shall be referred to the board for VSP designation review. Pursuant to Section 18-8314(5), Idaho Code, the sexual offender shall be designated as a VSP. (10-1-04)T

153. SCOPE OF EVALUATION.

The board and the evaluator conducting the psychosexual evaluation may have access to and may review all obtainable records on the sexual offender to conduct the VSP designation assessment. If required, the offender shall sign a release of information to comply with state or federal regulations. (10-1-04)T

154. -- 169. (RESERVED).

170. BOARD REVIEW.

The board shall assess how biological, psychological, and situational factors, may cause or contribute to the offender's sexual behavior. (10-1-04)T

01. Evidence. (10-1-04)T

a. The board may collect documentary evidence in the form of copies, facsimiles, hearsay, or excerpts. (10-1-04)T

b. The board may take notice of any facts that could be judicially noticed in the courts of this state, and generally recognized technical or scientific facts within the board's specialized knowledge. (10-1-04)T

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c. The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (10-1-04)T

d. The board may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds. (10-1-04)T

e. The board is not obligated to accept or review oral statements or documents, other than those of the victim. (10-1-04)T

f. All other evidence may be admitted. (10-1-04)T

02. Review. The board's review for VSP designation is conducted in executive session pursuant to Section 18-8315, Idaho Code. The board may authorize individuals to attend a designated period of the executive session. (10-1-04)T

03. Teleconference. A review conducted by teleconference is permitted. (10-1-04)T

171. DEMONSTRATION OF HIGH RISK.

The board determines if a prima facie case exists to justify the sexual offender's designation as a VSP. A sexual offender shall be designated as a VSP if his risk of re-offending sexually or threat of violence is of sufficient concern to warrant the designation for the safety of the community. (10-1-04)T

172. BOARD VOTE.

The board reviews documentation and makes a determination whether a sexual offender presents a high risk of re-offense, and whether the sexual offender should be designated as a VSP. (10-1-04)T

01. Member Exclusion. A board member who has had prior association with the sexual offender being reviewed is excluded from the discussion and voting process on that offender. (10-1-04)T

02. Vote. A majority vote to designate a sexual offender is required. (10-1-04)T

a. Votes are taken and recorded in executive session pursuant to Section 18-8315, Idaho Code. (10-1-04)T

b. Votes of individual members are not public record. (10-1-04)T

03. Decision. (10-1-04)T

a. The board may conclude from the evidence that the sexual offender has or probably has a mental abnormality or personality disorder, causing or contributing to the sexual offender's risk of re-offense. (10-1-04)T

b. The board may designate a sexual offender as a VSP with or without a finding of mental abnormality or personality disorder. (10-1-04)T

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c. The decision of the board is recorded in the minutes of the regular meeting.
(10-1-04)T

d. The results of any designation action may be requested by submitting a public record request to the board.
(10-1-04)T

173. FINDINGS.

The board makes written findings that include the risk assessment; the reasons upon which the risk assessment was based; the determination whether the sexual offender should be designated as a VSP; and the reasons upon which the determination was based.
(10-1-04)T

174. NOTICE OF DESIGNATION AS A VIOLENT SEXUAL PREDATOR.

Pursuant to Sections 18-8319(2) and 18-8320, Idaho Code, the sexual offender, the sheriff of the county where the sexual offender resides or intends to reside upon release, the central registry, and the IDOC are notified of the offender's designation as a VSP. Notice is in the form of the board's written findings.
(10-1-04)T

175. -- 189. (RESERVED).

190. JUDICIAL REVIEW.

A sexual offender designated as a VSP has the right to judicial review of the designation, pursuant to Section 18-8321, Idaho Code. A request for judicial review must be filed with the courts no more than fourteen (14) calendar days after receiving the "Notice of Designation as a VSP" from the board.
(10-1-04)T

191. -- 199. (RESERVED).

200. VICTIMS.

The board respects and complies with the rights of victims as identified in Section 19-5306, Idaho Code, and Article I, Section 22, Idaho Constitution.
(10-1-04)T

201. LOCATING VICTIMS.

01. Attempt to Locate. The board shall make a good faith effort to locate the victim of the sexual offender's crime of conviction. The purpose for this effort is to inform the victim of the sexual offender's referral for VSP designation review.
(10-1-04)T

02. Methods. In effort to locate the victim, the board may use information contained in IDOC or Commission for Pardons and Parole records, telephone directories, or contact with the county where the case was tried.
(10-1-04)T

03. Decision. If the victim has been located, the board shall notify the victim of the VSP designation action.
(10-1-04)T

04. No Contact. The board respects the right of the victim to not be contacted.
(10-1-04)T

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202. VICTIM PARTICIPATION.

The victim, person representing the victim, or both, is afforded an opportunity to testify or submit written documents for consideration by the board. (10-1-04)T

01. Meeting. The victim, person representing the victim, or both, is permitted to attend the portion of the executive session review that pertains to the associated sexual offender. The chairman has discretion to limit the allotted time for testimony. The victim, person representing the victim, or both, is excluded during any board discussion or vote. (10-1-04)T

a. The victim, person representing the victim, or both, is permitted to review documents not restricted by law, that are being considered as evidence by the board. (10-1-04)T

b. Before taking testimony from the victim, the board shall use reasonable means to verify the identity of the victim, person representing the victim, or both, or to verify the authenticity of written statements. (10-1-04)T

c. The board may exclude evidence if the board determines the evidence is irrelevant, unduly repetitious, unreliable, or excludable on constitutional or statutory grounds. (10-1-04)T

02. Victim Confidentiality Protected. Communications between the board and victim, person representing the victim, or both, are confidential. Information identifying the victim or the location of the victim is exempt from disclosure, pursuant to Section 18-8321(3)(a) and (b), Idaho Code. (10-1-04)T

203. -- 999. (RESERVED).